

SENATE BILL NO. 248

INTRODUCED BY D. GRIMES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING INFORMATION COLLECTED BY HEALTH CARE REVIEW COMMITTEES; EXTENDING INHOSPITAL REVIEW LAWS TO ALL HEALTH CARE FACILITIES; CLARIFYING THE TYPES OF COMMITTEES THAT HAVE ACCESS TO HEALTH CARE INFORMATION; EXTENDING THE CONFIDENTIALITY AND EVIDENTIARY PRIVILEGE TO COMMITTEE RECORDS AND PROCEEDINGS; CLARIFYING THAT ONLY THE DATA OF HEALTH CARE REVIEW COMMITTEES IS PROTECTED FROM DISCLOSURE TO A PATIENT; AMENDING SECTIONS 50-16-201, 50-16-202, 50-16-203, 50-16-204, 50-16-205, AND 50-16-542, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-16-201, MCA, is amended to read:

"50-16-201. ~~Data defined~~ Definitions. As used in this part, the following definitions apply:

(1) (a) ~~"data"~~ "Data" means written reports, notes, or records or oral reports or proceedings of tissue committees or other medical staff committees created by or at the request of a utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee of a health care facility that are used exclusively in connection with the professional training, supervision, or discipline of the a medical staff of hospitals practitioner by a health care facility.

(b) The term does not include incident reports or occurrence reports.

(2) "Health care facility" has the meaning provided in 50-5-101.

(3) "INCIDENT REPORTS" OR "OCCURRENCE REPORTS" MEANS A WRITTEN BUSINESS RECORD OF A HEALTH CARE FACILITY, CREATED IN RESPONSE TO AN UNTOWARD EVENT, SUCH AS A PATIENT INJURY, ADVERSE OUTCOME, OR INTERVENTIONAL ERROR, IN ORDER TO ENSURE A PROMPT EVALUATION OF THE EVENT. THE TERMS DO NOT INCLUDE ANY SUBSEQUENT EVALUATION OF THE EVENT IN RESPONSE TO AN INCIDENT REPORT OR OCCURRENCE REPORT BY A UTILIZATION REVIEW, PEER REVIEW, MEDICAL ETHICS REVIEW, QUALITY ASSURANCE, OR QUALITY IMPROVEMENT COMMITTEE.

~~(3)~~(4) "Medical practitioner" means an individual licensed by the state of Montana to engage in the practice of medicine, osteopathy, podiatry, optometry, or a nursing specialty described in 37-8-202(5)

1 or licensed as a physician assistant-certified pursuant to 37-20-203."

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3 **Section 2.** Section 50-16-202, MCA, is amended to read:

4 **"50-16-202. Committees to have access to information.** It is in the interest of public health and
5 patient medical care that ~~in-hospital medical staff~~ health care facility committees have access to the
6 records, and other health care information, ~~and other data~~ relating to the condition and treatment of
7 patients in ~~such hospital~~ the health care facility to study and evaluate for the purpose of evaluating matters
8 relating to the care and treatment of ~~such~~ patients for research purposes and for the purpose of reducing
9 morbidity or mortality and obtaining statistics and information relating to the prevention and treatment of
10 diseases, illnesses, and injuries. To carry out ~~such~~ these purposes, any ~~hospital~~ health care facility, and
11 its agents and employees may provide medical records, or other health care information, ~~or other data~~
12 relating to the condition and treatment of any patient in ~~said hospital~~ the health care facility to any
13 ~~in-hospital medical staff utilization review, peer review, medical ethics review, quality assurance, or quality~~
14 improvement committee of the health care facility."

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16 **Section 3.** Section 50-16-203, MCA, is amended to read:

17 **"50-16-203. Committee health care information and proceedings confidential and privileged.** All
18 ~~such records, data, and health care information shall be referred to in 50-16-202~~ are confidential and
19 privileged to ~~said~~ the committee and the members thereof ~~of the committee~~, as though ~~such hospital the~~
20 health care facility patients were the patients of the members of ~~such the~~ committee. All proceedings, ~~and~~
21 ~~in-hospital records, and reports of such medical staff committees shall be~~ are confidential and privileged."

22

23 **Section 4.** Section 50-16-204, MCA, is amended to read:

24 **"50-16-204. Restrictions on use or publication of information.** ~~Such in-hospital medical staff~~
25 ~~committees~~ A utilization review, peer review, medical ethics review, quality assurance, or quality
26 improvement committee of a health care facility shall may use or publish health care information ~~from such~~
27 ~~material~~ only for the purpose of evaluating matters of medical care, therapy, and treatment for research
28 and statistical purposes. Neither ~~such in-hospital medical staff~~ a committee nor the members, agents, or
29 employees thereof of a committee shall disclose the name or identity of any patient whose records have
30 been studied in any report or publication of findings and conclusions of ~~such a~~ committee, but ~~such~~

1 ~~in hospital medical staff~~ a committee, and its members, agents, or employees shall protect the identity of
2 any patient whose condition or treatment has been studied and ~~shall~~ may not disclose or reveal the name
3 of any ~~such in-hospital~~ health care facility patient."

4
5 **Section 5.** Section 50-16-205, MCA, is amended to read:

6 **"50-16-205. Data confidential -- inadmissible in judicial proceedings.** All data ~~shall be~~ is
7 confidential and ~~shall~~ is not be discoverable or admissible in evidence in any judicial proceeding, ~~but~~
8 However, this section ~~shall~~ does not affect the discoverability or admissibility in evidence of records
9 ~~dealing with the patient's hospital health care and treatment~~ HEALTH CARE INFORMATION THAT IS NOT DATA AS
10 DEFINED IN 50-16-201."

11
12 **Section 6.** Section 50-16-542, MCA, is amended to read:

13 **"50-16-542. Denial of examination and copying.** (1) A health care provider may deny access to
14 health care information by a patient if the health care provider reasonably concludes that:

15 (a) knowledge of the health care information would be injurious to the health of the patient;

16 (b) knowledge of the health care information could reasonably be expected to lead to the patient's
17 identification of an individual who provided the information in confidence and under circumstances in
18 which confidentiality was appropriate;

19 (c) knowledge of the health care information could reasonably be expected to cause danger to the
20 life or safety of any individual;

21 (d) the health care information ~~was~~ is data, as defined in 50-16-201, that is compiled and is used
22 solely for ~~litigation, utilization review, peer review, medical ethics review, quality assurance, peer review,~~
23 ~~or administrative purposes or quality improvement;~~

24 (e) the health care information might contain information protected from disclosure pursuant to
25 50-15-121 and 50-15-122;

26 (f) the health care provider obtained the information from a person other than the patient; or

27 (g) access to the health care information is otherwise prohibited by law.

28 (2) Except as provided in 50-16-521, a health care provider may deny access to health care
29 information by a patient who is a minor if:

30 (a) the patient is committed to a mental health facility; or

1 (b) the patient's parents or guardian has not authorized the health care provider to disclose the
2 patient's health care information.

3 (3) If a health care provider denies a request for examination and copying under this section, the
4 provider, to the extent possible, shall segregate health care information for which access has been denied
5 under subsection (1) from information for which access cannot be denied and permit the patient to
6 examine or copy the information subject to disclosure.

7 (4) If a health care provider denies a patient's request for examination and copying, in whole or
8 in part, under subsection (1)(a) or (1)(c), the provider shall permit examination and copying of the record
9 by the patient's spouse, adult child, or parent or guardian or by another health care provider who is
10 providing health care services to the patient for the same condition as the health care provider denying the
11 request. The health care provider denying the request shall inform the patient of the patient's right to
12 select another health care provider under this subsection."

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14 NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

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